

1 Larry W. Lee (SBN 228175)
2 lwlee@diversitylaw.com
3 Max W. Gavron (SBN 291697)
4 mgavron@diversitylaw.com
5 **Diversity Law Group, A P.C.**
6 515 S. Figueroa St., Suite 1250
7 Los Angeles, CA 90071
8 Tel: 213 488-6555

9 William L. Marder, Esq. (State Bar No. 170131)
10 **Polaris Law Group LLP**
11 501 San Benito Street, Suite 200
12 Hollister, CA 95023
13 Tel: (831) 531-4214
14 Fax: (831) 634-0333

15 Attorneys for Plaintiff Steven Yetter and
16 on behalf of all other similarly aggrieved employees

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF SHASTA**

19 Steven Yetter, on behalf of himself and all
20 other similarly aggrieved employees,

21 Plaintiff,

22 vs.

23 Select Comfort Retail Corp., a Minnesota
24 corporation; and Does 1-25, inclusive,

25 Defendants.

CASE NO.:

197881

**COMPLAINT FOR RECOVERY OF CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
("PAGA")**

FILED

JUL 29 2021

CLERK OF THE SUPERIOR COURT
BY: C. WEST, DEPUTY CLERK

BY FAX

1 Plaintiff Steven Yetter ("Plaintiff"), on behalf of himself and all others similarly
2 aggrieved, alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this action as a proposed representative action against Defendant
5 Select Comfort Retail Corp. (hereafter "Defendant Select Comfort" or "Select Comfort") a retail
6 company which sells household furniture, beds and mattresses at various locations in California.
7 Plaintiff was employed by Defendant Select Comfort and Does 1 through 25 ("Defendants") as a
8 Store Manager or similar position. Plaintiff seeks to recover civil penalties for all California-
9 based "aggrieved employees" during the "Relevant Time Period" (defined as at least one year
10 prior to May 25, 2021, up to and including the date of commencement of trial) who incurred
11 wage and hour violations and losses as hereinafter described.

12 2. Plaintiff has given notice of these claims to the California Labor and Workforce
13 Development Agency ("LWDA") and to the agent for service of process for each Defendant, to
14 the extent such addresses are available by the California Secretary of State. The notice has been
15 sent pursuant to the Private Attorney General Act of 2004 ("PAGA"), California Labor Code
16 sections 2698, *et seq.* Plaintiff has asserted PAGA claims as a "Representative Action" as
17 specifically permitted and authorized by Labor Code section 2699.3(a)(2)(C). Accordingly,
18 Plaintiff has exhausted all notice requirements under the PAGA.

19 3. This Complaint challenges systemic illegal employment practices resulting in
20 violations of the California Labor Code and the PAGA against employees of Defendants.

21 4. Plaintiffs are informed and believe and based thereon allege that Defendants
22 jointly and severally have acted intentionally and with deliberate indifference and conscious
23 disregard to the rights of all employees by failing to properly calculate the regular rate for
24 purposes of paying meal period premiums and failing to pay all wages owed upon separation of
25 employment to Plaintiffs and the Aggrieved Employees.

26 5. Plaintiffs are informed and believe and based thereon allege that Defendants have
27 engaged in, among other things a system of willful violations of the California Labor Code,
28 Business and Professions Code and applicable IWC Wage Orders by creating and maintaining

1 policies, practices, and customs that knowingly deny employees the above stated rights and
2 benefits.

3
4 **I. JURISDICTION AND VENUE**

5 6. The Court has jurisdiction over the violations of the California Labor Code §§
201-203, 226.7, 512, and 2698 et seq.

6 7. Venue is proper in Shasta County because Defendants maintain business locations
7 in Shasta County, and Plaintiffs performed work for Defendants in Redding, California.

8
9 **II. PARTIES**

10 8. Plaintiff was hired by Defendants as a non-exempt employee. On or about May
21, 2021, Plaintiff separated from employment.

11 9. Plaintiffs were and are the victims of the policies, practices, and customs of
12 Defendants complained of in this action in ways that have deprived them of the rights guaranteed
13 by California Labor Code §§ 201-203, 226.7, 512, and 2698 et seq., and the applicable IWC
14 Wage Orders.

15 10. Plaintiffs are informed and believe and based thereon allege that Defendant Select
16 Comfort is a corporation organized under the laws of the state of Minnesota. Defendant Select
17 Comfort is headquartered in Minneapolis, Minnesota. Defendant does business in the State of
18 California and County of Shasta selling mattresses.

19 11. Plaintiffs are informed and believe and based thereon allege that at all times
20 herein mentioned Defendant and Does 1 through 50 are and were business entities, individuals,
21 and partnerships, licensed to do business and actually doing business in the State of California.

22 12. As such, and based upon all the facts and circumstances incident to Defendants'
23 business in California, Defendants are subject to California Labor Code §§ 201-203, 226.7, 512,
24 and 2698 et seq., and the IWC Wage Orders.

25 13. Plaintiffs do not know the true names or capacities, whether individual, partner or
26 corporate, of the Defendants sued herein as Does 1 through 25, inclusive, and for that reason,
27 said Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
28 complaint when the true names and capacities are known. Plaintiffs are informed and believe

1 and based thereon allege that each of said fictitious Defendants were responsible in some way for
2 the matters alleged herein and proximately caused Plaintiffs and members of the general public
3 and class to be subject to the illegal employment practices, wrongs and injuries complained of
4 herein.

5 14. At all times herein mentioned, each of said Defendants participated in the doing
6 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
7 Defendants, and each of them, were the agents, servants and employees of each of the other
8 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
9 acting within the course and scope of said agency and employment.

10 15. Plaintiffs are informed and believes and based thereon alleges that at all times
11 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
12 joint venturer of, or working in concert with each of the other co-defendants and was acting
13 within the course and scope of such agency, employment, joint venture, or concerted activity.
14 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
15 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
16 Defendants.

17 16. At all times herein mentioned, Defendants, and each of them, were members of,
18 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
19 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

20 17. At all times herein mentioned, the acts and omissions of various Defendants, and
21 each of them, concurred and contributed to the various acts and omissions of each and all of the
22 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
23 herein mentioned, Defendants, and each of them, ratified each and every act or omission
24 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
25 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
26 the damages as herein alleged.

FIRST CAUSE OF ACTION

PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE

(By Plaintiff on behalf of all similarly aggrieved employees as against each Defendant)

18. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA dated May 25, 2021.

19. Plaintiffs bring this cause of action as a proxy for the State of California and in this capacity, seek penalties on behalf of all Aggrieved Employees from May 25, 2020, through the present, for Defendants' violations of Labor Code §§ 201-203, 226.7, and 512, arising from Defendants' failure to properly calculate the regular rate of pay for purposes of paying meal period premiums and pay all wages owed upon separation of employment.

20. Defendants violated Labor Code §§ 226.7 and 512 by failing to pay aggrieved employees meal period premium pay for missed/untimely meal periods and rest period premium pay for missed/untimely rest periods at their regular rates of pay as required by these provisions. Specifically, Labor Code § 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." Plaintiff and the aggrieved employees earned non-discretionary remuneration, including various incentives and commissions. As these items are non-discretionary forms of remuneration, they should have been included in the regular rate of pay for purposes of paying Plaintiff and the aggrieved employees meal and rest period premium pay. However, Defendant paid meal and rest period premium pay at the base rate of pay. As a result, Defendant also violated Labor Code §§ 201-203 by failing to pay aggrieved employees all of the wages owed upon separation of employment due to the unpaid missed meal and rest period premiums.

21. On or about May 25, 2021, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-203, 226.7, and 512, pursuant to Labor Code § 2698, et seq., the Private Attorneys General Act ("PAGA").

22. To date, the LWDA has not responded to Plaintiff's written notice.

23. As such, pursuant to Labor Code § 2699(a), Plaintiffs seek recovery of any and all applicable civil penalties for Defendants' violation of Labor Code §§ 201-203, 226.7, and 512, for the time period described above, on behalf of themselves and other Aggrieved Employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants on behalf of the State of California and Aggrieved Employees, as follows:

1. Upon the First Cause of Action, for civil penalties according to proof pursuant to Labor Code § 2698, *et seq.*, and for costs and attorneys' fees;

2. On all causes of action, for attorneys' fees and costs as provided by California Labor Code § 2699 and Code of Civil Procedure § 1021.5; and

3. For such other and further relief as the Court may deem just and proper.

DATED: July 29, 2021

DIVERSITY LAW GROUP, P.C.

By:

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff and the Class